Office of Legislative Research
Research Report
May 1, 2015
2015-R-0135

SUMMARY OF STATE OF CONNECTICUT V. NICHOLAS MENDITTO

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WHAT THE COURT SAID

"Possession of less than one-half ounce of marijuana now holds the same legal status as . . . minor civil violations. . . .The legislature has determined that such violations should be handled in the same manner as civil infractions, such as parking violations" (pp. 874, 875).

It was clear that the legislature "did not intend persons convicted of minor civil violations to suffer the negative repercussions associated with having a criminal record" (p. 873).

[We] see no "reason why the legislature would have intended criminal records be retained for conduct that is no longer criminal and would not lead to criminal records if committed today" (p. 874).

ISSUE

Summary of *State v. Menditto*—Re: Erasure of Criminal Record After Crime is Decriminalized.

SUMMARY

In *State v. Menditto*, the Connecticut Supreme Court considered whether the reduction of penalties for illegal possession of marijuana following the enactment of Public Act (PA) 11-71 decriminalized the possession of less than one-half ounce of marijuana, for purposes of the criminal records erasure law (*State v. Menditto,* 315 Conn. 861 (2015)).

The case involved Nicholas Menditto who was convicted in 2009 on charges of possessing small amounts of marijuana on two separate occasions and sentenced to a suspended prison term and probation. Before his probation ended, Menditto was again arrested for possessing a small amount of marijuana. As a consequence, he was charged with a probation violation. Each of his arrests involved less than one-half ounce of marijuana.

In 2011, the state reduced the penalty for possessing less than one-half ounce of marijuana from a misdemeanor to a civil violation with a penalty of $150 to $500, depending on the number of prior offenses. Based on the law change, Menditto petitioned to erase his 2009 convictions, dismiss his probation violation, and dismiss his 2011 controlled substance charge. The trial court denied his motions, and the Appellate

Court affirmed. The Supreme Court agreed to hear the appeal, limited to the erasure issue.

In a unanimous decision, the Supreme Court reversed the Appeals Court, noting that when the law changed, it made possession of small amounts of marijuana possession a civil infraction, on par with parking violations. The court ruled that Menditto had the right to the erasure of his two 2009 convictions for possession of less than one-half ounce of marijuana. He would still have to petition the court for erasure, because erasure is not automatic.

FACTS AND PROCEDURAL HISTORY

Under the state's erasure law, offenders convicted of acts that are subsequently decriminalized may petition to have their records erased. The court must order the physical destruction of all police, court, and prosecution records related to the conviction (CGS § 54-142d).

In 2009, Menditto, pleaded guilty to two separate charges of illegal possession of approximately .15 and .01 ounces of marijuana. He was given a two-year suspended sentence and 18 months of probation. During his probation, Menditto was arrested again and charged with, among other things, possessing a controlled substance (less than .04 ounces of marijuana). As a result of that arrest, Menditto was also charged, in April 2011, with violating his probation.

In 2011, the legislature reduced the penalty for possessing less than one-half ounce of marijuana from a term of imprisonment for up to five years, a fine of up to $3,000, or both, depending on the number of prior offenses, to a $150 fine for a first offense and between $200 and $500 for subsequent offenses (PA 11-71, effective July 1, 2011, codified at CGS § 21a-279a). In light of the change, Menditto (1) petitioned for the record of his 2009 convictions to be destroyed and (2) moved to dismiss his probation violation and controlled substance charge.

Both Menditto and the state agreed that the erasure statute's purpose is to allow people convicted of a crime to erase their criminal records if the legislature later decriminalizes the conduct. Both also maintained that the meaning of the erasure statute is plain and ambiguous. But they disagreed on the scope and meaning of the term "decriminalize." Menditto contended that any offense that is no longer a crime has, by definition, been decriminalized and former crimes reclassified as violations are subject to erasure.

The state contended, and a three-judge Appellate Court panel concluded, that an offense is decriminalized for purposes of the erasure statute only when the relevant

conduct has been fully legalized and no longer subject to punitive sanctions (*State v. Menditto*, 147 Conn. App. 232 (2013)).

THE SUPREME COURT RULING

The question before the Supreme Court was whether PA 11-71 decriminalized the possession of less than one-half ounce of marijuana, that is, whether changing the status of an illegal act from a crime to a minor civil violation constitutes decriminalization for purposes of the erasure statute. To answer the question, the court reviewed the issue *de novo* (i.e., as if it were considering the question for the first time, affording no deference to lower courts' decisions).

The court first examined the erasure statute's text and its relationship to the broader statutory scheme. Finding that the term "decriminalized" is not defined in state statutes, the court reviewed a range of sources, including dictionaries, other statutes, judicial decisions, and common law.

The court cited legislative initiatives in other jurisdictions, including California, Oregon, and New York, demonstrating that when Connecticut enacted the erasure statute the prevailing use of the term decriminalize meant to replace criminal sanctions by civil fines, rather than to fully legalize. It said reducing the maximum penalties for marijuana possession from imprisonment to relatively small, noncriminal fines was commonly referred to as "decriminalization" at the time the legislature enacted the erasure statute, and it appears to have been the primary context in which the term was used in the 1970s and early 1980s.

The court said that its conclusion finds support in Connecticut's statutory scheme, as modified over time. When the legislature enacted the erasure statute, the statutes recognized four categories of illegal conduct: (1) crimes, (2) offense violations, (3) nonoffense motor vehicle violations, and (4) infractions (CGS § 53a-24(a)). By 1993, the legislature had reclassified illegal acts into four new categories: (1) crimes; (2) major violations, which are deemed to be offenses and for which the maximum penalty is typically a fine of more than $500; (3) minor civil violations, which typically carry a $500 maximum fine; and (4) infractions (CGS § 53a-24). And relevant changes in the statutes provided that certain less serious violations would be governed by the same procedural rules as infractions. The Court said when the legislature enacted PA 11-71, it made possession of less than one-half ounce of marijuana a minor civil violation.

It is clear, the court wrote, that "the legislature did not intend people convicted of minor civil violations to suffer the negative repercussions associated with having a criminal record" (id. at p. 873).

> Section 51-164n (e), for example, provides that a summons for the commission of a minor civil violation . . . . "shall not be deemed to be an arrest . . . ." Similarly, payment of any fines imposed therefor "shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of the person . . . ." General Statutes § 51- 164n (c). Moreover, § 53a-24 (a) provides that even with respect to more serious offense violations, "[c]onviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense" (*Menditto* at pp. 873, 874).

The court said it saw no reason "why the legislature would have intended that criminal records be retained for conduct that is no longer criminal and that would not lead to the creation of criminal records if committed today" (id. at p. 874). It said that following the enactment of PA 11-71:

> possession of less than one-half ounce of marijuana now holds the same legal status as such minor civil violations as maintaining state records using unapproved paper, ink, or loose-leaf binders. . .This is not the sort of conduct to which society attaches substantial moral opprobrium, or which one takes into consideration when making important decisions such as hiring an employee, for which criminal records are often consulted. The legislature has determined that such violations are to be handled in the same manner as civil infractions, such as parking violations. The state has failed to suggest any plausible reason why erasure should be denied in such cases (id. at pp. 874, 875).

The court further pointed out that "possession of small quantities of marijuana is now unique even among minor civil violations, in that a person who pleads not guilty to an alleged violation is subject to a *lower* standard of proof at trial," namely "preponderance of the evidence, rather than the higher criminal standard—proof beyond a reasonable doubt—that governs most other violations and infractions" (id. at p. 875). It said that "subjecting marijuana possession to a civil burden of proof provides strong evidence that the legislature deems it to have been decriminalized" (id. at p. 875).

Lastly, the court also noted that during the relevant time period, when the legislature wanted to refer to full legalization of a formerly criminal act, it used the term "legalize" rather than "decriminalize." Thus, if the legislature had intended to apply the erasure statute solely to former crimes that have been fully legalized, it

would presumably have used the term ‘‘legalize’’ in crafting that statute, the court wrote (id. at p. 875).

The court concluded that the “legislature unambiguously intended to decriminalize possession of less than one-half ounce of marijuana” (id. at p. 871). It reversed the judgment of the Appellate Court with regard to the erasure of Menditto’s two 2009 convictions and directed the Appellate Court to remand the case to the trial court for further proceedings consistent with the opinion.

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